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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Shasta)

In re G.M, a Person Coming Under the Juvenile Court
Law

C081457

(Super. Ct. No. 12JVSQ2652002)

SHASTA COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

In re N.G., a Person Coming Under the Juvenile Court
Law

C082077

(Super. Ct. No. 12JVSQ2652102)

SHASTA COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

Mother appeals the visitation orders of the juvenile court as to her minor children, G.M., born in 2003, and N.G., born in 2006. Mother contends the trial court abused its discretion in issuing these visitation orders, as they delegate too much discretion to the minors and their legal guardians. We agree and reverse the visitation orders and remand for further proceedings on those orders.

BACKGROUND¹

The Shasta County Health and Human Services Agency (the Agency) placed the children in protective custody and filed petitions alleging the children came under the provisions of Welfare and Institutions Code section 300 in May 2012.² The juvenile court sustained the petitions. Mother received 21 months of family reunification services, and the juvenile court terminated these services in February 2014. During the permanency planning period, mother had monitored visits with the children once a month. In February 2015 the children were placed in separate foster homes. In September 2015 the juvenile court also ordered separate visits for mother with each child.

In September 2015 G.M.'s foster parents indicated they wanted to become his legal guardians. The juvenile court held a contested selection and implementation hearing for G.M. on February 19, 2016. Mother was present at the hearing and represented by counsel. The Agency's report recommended G.M.'s foster parents be appointed as his legal guardians and the juvenile court terminate dependency jurisdiction. Visits with mother increased G.M.'s anxiety and appeared stressful for him. The Agency recommended "supervised visitation . . . be reduced and limited to special occasions and holidays with all parties including the caregivers and [G.M.] in agreement. . . . [G.M.] reported . . . he wants to see his mom every few months." The Permanent Plan Review

¹ Because of the nature of the claims on appeal, a detailed recitation of the substantive facts underlying the dependency proceedings is unnecessary.

² Undesignated statutory references are to the Welfare and Institutions Code.

Findings and Orders attached to the report, and adopted by the juvenile court, indicate mother's "Minimum Visitation Order of the Court" is "4 visits per year, fully supervised." At the hearing, the juvenile court stated: "I would encourage the care provider guardian to allow visits between [G.M.] and his mother. . . . [¶] . . . [¶] So the findings and orders are page 18 through 20 [of the Permanent Plan Review Report] Child will not be continuing as a dependent of the court. The Court does find the permanent plan of guardianship to be appropriate. The Court will -- the Court has the letters of guardianship here and the Court will terminate dependency. Court also signs the [Judicial Council form] JV 320 orders consistent with my ruling." The JV-320 form ordered visitation between G.M. and mother "4 times per year as requested by the child and in agreement by all parties." Mother filed a timely notice of appeal from the February 19, 2016, orders and indicated she was appealing the ruling of the "Court terminating dependency, the Court's selection of who the guardian is to be and not ordering further investigation of the maternal grandfather as the proper placement/guardian."

In January 2016 N.G.'s foster parents indicated they wanted to become his legal guardians. The juvenile court conducted a contested permanency planning hearing on May 6, 2016. Mother was present at the hearing and represented by counsel. Mother had continued to visit N.G. regularly, but made inappropriate remarks to him during those visits, suggesting he would be returning to live with his family. These comments frightened N.G. N.G. wanted his foster parents to become his legal guardians, but was concerned about not seeing his mother anymore. The Permanent Plan Review Findings and Orders attached to the report, and adopted by the juvenile court, indicate mother's "Minimum Visitation Order of the Court" is "4 visits per year fully supervised." At the hearing, the juvenile court stated: "The court has read and considered the April 21st [Permanent Plan Review Report]. The court will adopt the findings and orders on pages 18 and 19 [of the Permanent Plan Review Report]. . . . [¶] Permanent plan of legal

guardianship. The court will adopt the JV320 orders identifying the permanent plan of guardianship. The court will terminate dependency.” The JV-320 form ordered visitation between N.G. and mother “4 times per year as requested by the child and in agreement by all parties.” Mother filed a timely notice of appeal from the May 6, 2016, orders and indicated she was appealing the ruling of “the Court terminating dependency, the Court’s selection of who the guardian is to be, finding the Department properly considered the relative placement preference in February 2015 and not ordering further investigation of the maternal grandfather as the proper placement/guardian, and finding it was too late in the proceedings to re-address whether or not ICWA applies.”

DISCUSSION

The sole substantive claim on appeal as to both minors is that the trial court erred in issuing its visitation orders, in that they are inconsistent and effectively delegate authority to the children and their guardians to determine whether visits will occur.³ Mother contends the visitation orders made adopting the findings and orders in the Permanent Plan Review and those on the JV-320 are inconsistent, resulting in an ambiguous order. Mother also complains the JV-320 visitation orders improperly delegate the discretion of whether to have visits at all to the children and their respective

³ We recognize neither notice of appeal specifically mentions the juvenile court’s visitation orders. Nonetheless, they do reference the specific dates on which those orders were made, February 19, 2016, and May 6, 2016. We construe notices of appeal liberally to implement the strong public policy favoring hearing the appeal on its merits. (*Norco Delivery Service, Inc. v. Owens-Corning Fiberglas, Inc.* (1998) 64 Cal.App.4th 955, 960.) This is particularly true where the faulty notice of appeal “engenders no prejudice and causes no confusion concerning the scope of the appeal.” (*Id.* at pp. 960-961.) Here, because mother appeals from the February and May orders terminating dependency jurisdiction and the visitation orders were made as part of those orders, her notices of appeal could be construed as from those orders. Moreover, the Agency has not indicated confusion about which orders mother is appealing and has made no claim it is prejudiced if we treat mother’s notices of appeal as if they were from the visitation orders. Therefore, we address the merits of mother’s claims of error in the visitation orders.

legal guardians. The Agency contends mother forfeited these claims by failing to object to any of the visitation orders in the juvenile court. The Agency also claims there was no abuse of discretion, as the orders attached to the Permanent Plan Review provided for minimum visitation for mother four times a year, fully supervised, and the JV-320 orders dealt with when, not if, visitation would take place.

Mother acknowledges she did not object to the visitation orders in the juvenile court. Ordinarily, such a failure forfeits the claim on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) “But, application of the forfeiture rule is not automatic.” (*Ibid.*) An issue may be raised on appeal if “ ‘it raises only a question of law and can be decided based on undisputed facts.’ [Citations.]” (*In re V.F.* (2007) 157 Cal.App.4th 962, 968.) In addition, application of the forfeiture rule requires that the party had a meaningful opportunity to object in the trial court to the court’s discretionary choice. That meaningful opportunity can only occur if the parties are clearly apprised of the choice the court intends to make and the reasons supporting that choice. (See *People v. Scott* (1994) 9 Cal.4th 331, 356.)

Here, the facts related to the visitation orders are not disputed. “[T]he legal significance of those facts is a question of law. [Citation.] A question of law is not automatically subject to the doctrine of forfeiture.” (*In re V.F.*, *supra*, 157 Cal.App.4th at p. 968.) Moreover, it is not clear from the record before us whether mother had a meaningful opportunity to object to the visitation orders. It is clear from the record the juvenile court was provided with the Permanent Review Plan, proposed findings and orders, and the completed copy of the JV-320 form prior to the hearing. But it is not clear that mother was also provided with these materials either prior to or at the hearing. There are no proofs of service prior to the hearing dates for either the Permanent Review Plan Reports, proposed findings and orders, or the JV-320 form. At the hearings, the juvenile court did not orally articulate the specific details of the visitation orders. Because the appeal raises a question of law, and the record is unclear that mother had the

opportunity to object to the juvenile court's visitation orders, we will "exercise our discretion to address [mother's] contention. (See, e.g., *In re M.R.* [(2005)] 132 Cal.App.4th [269,] 272 [exercising its discretion to address the visitation order despite the mother's failure to object to the order in the juvenile court].)" (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314.) We recognize that we must exercise special care in dependency cases, because the children's interest in permanency and stability are paramount. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1294.) The exercise of our discretion is appropriate in this case. This is not a case in which the children's wellbeing demands application of the forfeiture rule, nor will an appellate decision on the merits jeopardize their interest in permanency and stability. (*Id.* at pp. 1291, 1294.)

Turning to the merits of mother's claim, when legal guardianship is ordered, the dependency court must make an order for parental visitation, unless visitation would be detrimental. (§ 366.26, subd. (c)(4)(C); *In re M.R.*, *supra*, 132 Cal.App.4th at p. 274.) Neither the guardians nor the children may be given absolute discretion to determine whether visitation will occur at all. (*In re M.R.*, at p. 274; *In re S.H.* (2003) 111 Cal.App.4th 310, 317-320.) The power to determine the right and extent to visitation by a noncustodial parent in a dependency case resides with the court and may not be delegated to nonjudicial officials or private parties. (*In re Korbin Z.* (2016) 3 Cal.App.5th 511, 516-517 and cases cited therein; *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1136.) A visitation order may delegate to a third party the responsibility for managing the details of visits, including their time, place, and manner. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374.) But, "[i]f the juvenile court orders visitation, 'it must also ensure that at least some visitation, at a minimum level determined by the court itself, will in fact occur.' [Citation.] When the court abdicates its discretion and permits a third party, including the dependent child, to determine whether any visitation will occur, the court impermissibly delegates its authority over visitation and abuses its discretion. [Citation.]" (*In re Ethan J.* (2015) 236 Cal.App.4th 654, 661; *In re Korbin Z.*,

at p. 519.) The juvenile court may direct that the children's and guardian's wishes be respected as regards to the timing, length, or location of visits; "[h]owever, in fashioning an appropriate visitation order the juvenile court must recognize that any factor that may be considered, even to a 'limited' extent, can become decisive (the 'tipping factor') in some instances in determining whether visitation will occur, otherwise it is not truly a factor at all." (*In re S.H.*, at p. 319, and cases cited therein.)

Here, it is not clear what the visitation orders actually allow or require. Orally, at both hearings, the juvenile court indicated it was signing both the Permanent Review Plan findings and orders and the JV-320 orders. The two written orders are not the same and not consistent with each other. The Permanent Review Plan findings and orders indicate a minimum of four visits per year, fully supervised. The JV-320 orders indicate four visits per year as requested by the children and agreed to by all parties, but has no requirement of supervision. Neither order indicates the length or frequency of the visits. Furthermore, as to G.M. the court's oral statements on the record add confusion, as the juvenile court indicated it "would encourage the care provider guardian to allow visits between [G.M.] and his mother." This suggests visitation is not required at all. The visitation orders here are inconsistent with each other and unacceptably vague. They lack important specifics, such as length or frequency of the visits, or any requirement the visits be regular. Moreover, the JV-320 orders leave control over whether visits actually occur at all with the children and their respective legal guardians. "Given the lack of necessary detail in the [visitation orders] and the improper delegation of authority to the [children and legal guardians] regarding whether visitation would occur at all in the written order, we must remand for further proceedings at which the juvenile court shall clarify the terms and conditions applicable to [mother's] visitation" (*In re Kyle E.*, *supra*, 185 Cal.App.4th at p. 1136.)

DISPOSITION

The portion of the guardianship orders regarding visitation are reversed. The matters are remanded to the juvenile court with directions to issue new visitation orders clarifying the terms and conditions of visitation consistent with the views expressed herein. The orders shall specify the frequency and duration of visits and whether the visits are to be supervised.

RAYE, P. J.

We concur:

BUTZ, J.

HOCH, J.